Federal Government and not against the Governor of a State and the Chief Minister (*de facto* or *de jure*) of that State.

If the plaintiff failed in his attempt to shew that the making of the Proclamation under article 150 of the Constitution was not done *bona fide* but was in *fraudem legis* then even if paragraphs 18, 19, 20, 21 and 22 of his statement of claim remained as part of his pleadings I am of opinion that this court would be precluded from relying on the grounds therein stated to make any of the declarations which the plaintiff seeks in this action. In these circumstances I am of opinion that paragraphs 18, 19, 20, 21 and 22 of the statement of claim should be struck out on the ground that they seek to question the validity of a law made by Parliament in a manner other than that provided by Parliament in article 4(3) of the Constitution and in a court other than that to which exclusive jurisdiction has been given by article 128 of the Constitution.

I am conscious that in making this order I may be condemning the plaintiff to the institution of two actions in different courts. I have carefully considered this undesirable result but since the requirements as to the form of proceedings by which the validity of an Act may be questioned, the court in which jurisdiction to entertain such proceedings is vested, and the need for the leave of a judge of that court for the commencement of any such proceedings are part of the Constitution, they are to be regarded as conditions precedent and not as mere procedural requirements. They are mandatory and not merely directory provisions.

For the reasons set out above I decline to make the order in terms of the summons but I order that the plaintiff's statement of claim be amended by striking out paragraphs 18, 19, 20, 21 and 22 and I further order that the costs of this application be costs in the cause.

Order accordingly.

RE AW BOON HAW DECD.

[O.C.J. (Choor Singh J.) December 6, 1966]

[Singapore — Originating Petition Nos. 11, 12 and 13 of 1966]

Estate Duty — Assessment of estate duty — Application to court to determine estate duty — Whether court has power to allow appeal without "security being given to satisfaction of the court" — Amount of security — Estate Duty Ordinance (Cap. 162), s. 44.

The executrix of the will of Aw Boon Haw, deceased, was aggrieved by the notice of assessment of estate duty on the estate and applied to the court under section 44(1) of the Estate Duty Ordinance to determine the estate duty. The amount of estate duty claimed by the commissioner was $1,669,000 and the petitioner had paid $600,000. She applied (a) that no further estate duty or interest be paid by her and no further security be furnished to the commissioner pending the determination by the court of the estate duty (b) that if security is required, the court could allow the petitioner to give security for such sum as the court thinks fit.

Held: (1) the court has no power to allow an application to be brought under section 44(1) of the Estate Duty Ordinance without security being given to the satisfaction of the court;

(2) while the court has a discretion as to the mode in which the security is to be given, it has no discretion as to the amount of the security and such security must be given for the whole or any part of the estate duty which remains unpaid.

ORIGINATING PETITION.

R. K. Booker for the applicant.

Amarjit Singh Verick for the Commissioner of Estate Duties.

Cur. Adv. Vult.

Choor Singh J.: These proceedings arise out of a dispute between the Commissioner of Estate Duties and the executrices of the will of a deceased person concerning the amount of the estate duty payable in respect of the assets of the deceased in Singapore and raise a question as to the true interpretation of the provisions of section 44 of the Estate Duty Ordinance.

The petitioner is one of the executrices of the will of the late Aw Boon Haw who died on the 4th September, 1954. The Commissioner of Estate Duties issued a notice of assessment in respect of the assets of the deceased's estate in Singapore, valued by him at $4,890,239.30, claiming estate duty thereon at the rate of 37 per cent. The petitioner is aggrieved by the notice of assessment and has made an application to this court under section 44(1) of the Estate Duty Ordinance for the determination by this court of the amount of estate duty payable on the death of the deceased in respect of his assets in Singapore. Section 44(1) reads as follows:—

"An executor . . . . aggrieved by any claim by a notice of assessment by the commissioner for payment of estate duty or interest thereon, ... may, on payment of, or giving security as hereinafter mentioned for, the amount claimed by the commissioner or such portion of it as is then payable by him, apply to the High Court within three months from the date of the . . . . claim and the amount of the duty and interest shall be determined by the High Court, and if the duty and interest as determined is less than that paid to the commissioner the excess shall be repaid".

It will be seen that an aggrieved person's application under section 44(1) of the Ordinance calls for the determination by the court of the correct amount of the estate duty payable. And it would appear that such an application can only be made "on payment of or giving security as hereinafter mentioned for the amount claimed by the commissioner". Section 44(4) of the Ordinance provides as follows:—

"The High Court, if satisfied that it would impose hardship to require the applicant, as a condition of the application, to pay the whole, or as the case may be, any

part of the duty claimed by the commissioner or of such portion of it as is then payable by him, may allow the application to be brought on payment of no duty, or of such part only of the duty as to the court seems reasonable, and on security to the satisfaction of the court being given for the duty, or so much of the duty as is not so paid, but in such case the court may order interest at the rate of six per centum per annum to be paid on the unpaid duty so far as it becomes payable under the decision of the court".

In the present case the amount of estate duty claimed by the commissioner is $1,669,000. The petitioner has paid to the commissioner a sum of $600,000, and there is a balance of $1,069,000 still to be paid.

The petitioner applies under section 44(4) for an order that "no further estate duty or interest be paid by the applicant and no further security be furnished to the commissioner" pending the determination by this court of the estate duty payable by the petitioner. Counsel for the petitioner submits that the court has power to make such an order. Counsel for the commissioner submits that the court has no power to make such an order and that payment of the estate duty claimed by the commissioner can be postponed by the court, only on the giving of security by the applicant as provided by section 44(4) of the Ordinance.

In my opinion the contention of counsel for the commissioner is correct. Sections 44(1) and 44(4) of the Ordinance must be read together. Their effect is that any person aggrieved by the decision of the commissioner with respect to the amount of duty claimed by him may, on payment of the duty claimed or such portion of it as is then payable by him or on giving security for the duty or so much of the duty as is not paid, apply to the High Court to determine the amount of duty payable. In my opinion the court has no power to allow an application to be brought under section 44(1) without such security being given to the satisfaction of the court.

The next submission of counsel for the petitioner is that as the petitioner has offered to lodge with the commissioner securities to the total value of $617,000 as security for the payment of $1,069,000 which the commissioner claims as the balance of the estate duty, the petitioner should be allowed to proceed with her application under section 44(1) of the Ordinance.

Counsel for the commissioner submits that before the petitioner's application for the determination of the estate duty payable can be heard she must either pay up the balance of $1,069,000 or provide security for its payment and the security must be worth at least $1,069,000. Counsel contends that any property worth less than $1,069,000 if offered as security would be no security at all. His contention is that the security offered must be full security in the sense that should it become necessary for the commissioner to enforce the security, it should realise an amount sufficient to pay the $1,069,000 due to the commissoiner.

Counsel for the petitioner submits that the expression "security to the satisfaction of the court" appearing in section 44(4) means such security as the court deems sufficient having regard to all the circumstances of the case. In the present case, counsel states that neither the petitioner nor her co-executrix has any other assets in Singapore and it is virtually impossible for them to find any other security. It is suggested under the circumstances it will be a miscarriage of justice if the petitioner is not allowed, for want of security, to proceed with her application under section 44(1) for the determination by this court of the correct amount of the estate duty payable.

In my view the submission of counsel for the commissioner is correct. The expression "security to the satisfaction of the court" means what it states i.e. security which the court considers satisfactory. The court has a discretion as to the mode in which security has to be given, i.e. whether it should be in the form of a banker's guarantee, the deposit of title deeds, a bond with sureties or some other form of security. But the court has no discretion as to the amount of the security. In my opinion the effect of section 44(4) is that where the High Court is satisfied that it would impose hardship to require the applicant, as a condition of the application under section 44(1), to pay the whole or any part of duty claimed by the commissioner, or such portion of it as is then payable by him, it may allow the application to be brought without payment of any part of the duty, or upon payment of such part as to the court seems reasonable, provided that security, satisfactory to the court, is given for the whole or any part of the duty which remains unpaid.

The applicant has offered to deposit with the commissioner securities to the value of $617,000 as security for the balance of $1,069,000. In my opinion she must give security for the whole sum that remains unpaid i.e. $1,069,000 before she can be allowed to proceed with her application under section 44(1). Her application under section 44(4) is accordingly dismissed.

Application dismissed.

Solicitors: *Allen & Gledhill.*

CHEAM GAIK CHYE v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong Hock Sim J.) August 6, 1966]

[Penang — Criminal Appeal No. 5 of 1966]

Fisheries — Punishment for offence under rules made under repealed Fisheries Ordinance — Power to regulate use of traps or fishing nets — Whether includes power